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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 CHAD TOLAND,

8 Plaintiff,

9 v.

10 CNA INSURANCE and VALLEY
FORGE INSURANCE COMPANY,

11 Defendants.

CASE NO. C19-5373 BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND

12 This matter comes before the Court on Plaintiff Chad Toland's ("Toland") motion
13 for leave to amend complaint. Dkt. 10. The Court has considered the pleadings filed in
14 support of and in opposition to the motion and the remainder of the file and hereby grants
15 the motion for the reasons stated herein.

16 **I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

17 On February 2, 2016, Toland sustained injuries when the truck he was driving was
18 rear-ended by an underinsured motorist. Dkt. 1-2, ¶¶ 4, 7, 10. Toland was driving the
19 truck while on the job for his employer, South Bay Excavating. *Id.* ¶ 4. Defendants CNA
20 Insurance ("CNA") and Valley Forge Insurance Company ("Valley Forge") (collectively
21 "Defendants") provided commercial auto insurance for South Bay Excavating. *Id.* The
22 uninsured motorist's insurer tendered the limits of her policy, \$50,000, to Toland. *Id.* ¶

1 10. Toland alleges he has accumulated medical expenses of more than \$100,000 since the
2 accident. *Id.* ¶ 9. Upon notice, CNA permitted release of the uninsured motorist for the
3 policy limit. *Id.* ¶ 12. On October 5, 2017, a demand was filed with CNA for Toland’s
4 claims. *Id.* ¶ 13. On April 5, 2018, CNA responded with an offer of \$10,000. *Id.*

5 On March 28, 2019, Toland filed a complaint against Defendants for breach of
6 contract, negligence, and violation of the Washington Consumer Protection Act in the
7 Pierce County Superior Court for the State of Washington. Dkt. 1-2. On April 10, 2019,
8 Toland filed an IFCA notice with the Washington Insurance Commissioner. Dkt. 10 at 2.
9 On May 3, 2019, Defendants removed the case to this Court. Dkt. 1.

10 On October 7, 2019, Toland moved for leave to amend. Dkt. 10. On October 21,
11 2019, Defendants responded. Dkt. 12. Toland did not reply.

12 **II. DISCUSSION**

13 Toland seeks to amend his complaint to allege a violation of the Insurance Fair
14 Conduct Act (“IFCA”), RCW 48.30.015, and to allege a claim for bad faith. Dkt. 11-3.

15 **A. Standard**

16 When the time for amendment as a matter of course has expired, “a party may
17 amend its pleading only with the opposing party’s written consent or the court’s leave.”
18 Fed. R. Civ. P. 15(a)(2). To determine whether amendment is appropriate, the Court
19 considers five potential factors: (1) bad faith, (2) undue delay, (3) prejudice to the
20 opposing party, (4) futility of amendment, and (5) whether there has been previous
21 amendment. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).
22

1 Leave to amend “shall be freely given when justice so requires.” *AmerisourceBergan*
2 *Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).

3 “[A] proposed amendment is futile only if no set of facts can be proved under the
4 amendment to the pleadings that would constitute a valid and sufficient claim or
5 defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). Leave to
6 amend should be denied when “it appears beyond doubt that the proposed pleading would
7 be subject to dismissal.” *Wizards of the Coast LLC v. Cryptozoic Entm’t LLC*, 309
8 F.R.D. 645, 654 (W.D. Wash. 2015).

9 **B. Analysis**

10 Defendants do not oppose Toland’s addition of a bad faith claim. Dkt. 12 at 1–2.
11 Defendants argue that Toland should not be permitted to add a claim under the IFCA
12 because such a claim would be futile. *Id.* at 2. Defendants present arguments on futility
13 which are more appropriate to a fully-briefed motion to dismiss than to opposition to a
14 motion for leave to amend. Denial of leave to amend for futility is rare. *Nebula, LLC v.*
15 *Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003). Leave to amend should be denied
16 only if it is “beyond doubt” that the amended complaint would be subject to dismissal for
17 failure to state a claim. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 188 (9th Cir.
18 1987).

19 Defendants argue that Toland’s citation to their April 5, 2018 settlement offer
20 shows that they never denied Toland’s claim, but instead made a settlement offer and
21 invited Toland to submit additional information. Dkt. 12 at 3–4. Defendants ask the Court
22 to conclude that Toland has failed to allege facts showing that, as required under *Perez-*

1 *Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn.2d 669, 684 (2017), Defendants either
2 unreasonably denied a claim for coverage or unreasonably denied payment of benefits.
3 Dkt. 12 at 5. Defendants argue that like the plaintiff in *Spencer v. State Farm Mut. Auto.*
4 *Ins. Co.*, No. C16-5885 BHS, 2017 WL 4619221, at *3 (W.D. Wash. Oct. 16, 2017),
5 Toland has alleged only disparity in claim value, which does not establish a claim for
6 unreasonable denial of benefits without more. *Id.* at 6. However, at least some of
7 Toland's allegations could provide a basis to conclude that Defendants unreasonably
8 denied coverage, such as the failure to investigate wage loss. Dkt. 10 at 4-5. While it is
9 possible that a court would agree with Defendants that Toland's facts as alleged do not
10 state a claim for an unreasonable denial, this conclusion is not beyond doubt. *DCD*
11 *Programs*, 833 F.2d at 188. The Court thus declines to deny amendment on the basis of
12 futility. Because Defendants do not argue the Court should deny leave to amend on any
13 of the other available bases, the Court grants Toland's motion.

14 **III. ORDER**

15 Therefore, it is hereby **ORDERED** that Toland's motion for leave to amend, Dkt.
16 10, is **GRANTED**. Toland shall file his amended complaint no later than November 27,
17 2019.

18 Dated this 21st day of November, 2019.

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21 BENJAMIN H. SETTLE
22 United States District Judge